IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.290 OF 1999

The Goa Port Dock Employees Union,
represented by Shri Ulhas P. Gurav,
General Secretary, having Office
at Kamgar Bhavan, Swatantra Path,
Vasco-da-Gama, Goa. ... Petitioners.

V/s.

(1) The Board of Trustees of
Marmugao Port Trust, having
office at Headland Sada,
Marmugao, Goa.

(2) The Union of India, through

(a) The Secretary (Labour),
Shram Bhavan,
New Delhi;

(b) The Ministry (Transport),
Department of Surface
Transport, New Delhi. .... Respondents.

Mr. M.S. Sonak, Advocate for the petitioner.

Mr. V.B. Nadkarni, Sr. Advocate with Mr. Y.V. Nadkarni, Advocate for the respondent No.1

Mr. Joseph Vaz, Addl. Central Govt. Standing Counsel for respondent No.2(a) and 2(b).

CORAM : N.N. MHATRE &
P.V. HARDAS, J.

DATE : JANUARY 20, 2004.

ORAL JUDGMENT : (Per MHATRE, J.)

The petitioners are a registered trade union, registered under the Trade Unions Act, 1926, representing the workmen employed in the Mormugao Port Trust. By this petition, the petitioners have sought a

mandamus directing the respondent Mormugao Port Trust to extend the benefits of Performance Group Reward Scheme from 1.1.1988 to 1.4.1998 with all consequential and attendant benefits.

2. The facts giving rise to the present petition, are as follows :

The 53 employees who are concerned in this petition and who are represented by the petitioners are working in the Mechanical Ore Handling Plant at Berth No.9 in the Mormugao Port Trust. The Port Trust formulated an incentive scheme known as The Performance Group Reward Scheme, which was approved by the Ministry of Surface Transport on 8.3.1988 subject to certain modifications. Payments were made in accordance with the Scheme. However, certain categories of workmen were excluded from the benefit of the scheme. The petitioners, therefore, raised the demand with the first respondent contending that since these workmen also contribute to the productivity of the respondent No.1, the benefits of the scheme should be extended to these workmen. Pursuant to discussions and negotiations some more workmen were extended the benefits of the scheme. However, 53 workmen continued to be excluded and hence an industrial dispute was raised by the petitioners on behalf of these workmen

for securing the benefits of the scheme retrospectively from 1.1.1988. As the management did not concede to the demand made by the petitioners, a reference was made for adjudication before the Central Government Industrial Tribunal on 22.2.1990. By an Award dated 15.3.1995, the Tribunal rejected the reference. This Award was challenged by the petitioners by filing Writ Petition No.308/1995. The Marmugao Port Trust in that petition agreed to grant to the 53 employees in question the benefits of the scheme prospectively i.e. from 1.3.1998. It was made clear that the scheme would not be applicable with retrospective effect. The petitioners thus accepted the implementation of the scheme prospectively qua the 53 employees and sought liberty to make a fresh representation in respect of the retrospective effect of the scheme. The petitioners sought implementation of the scheme from the date of the reference i.e. from 22.2.1990. While allowing the petition this Court granted liberty to the petitioners to make a representation to the first respondent for claiming the benefits with retrospective effect i.e. from the date of the reference. Such a representation was made by the petitioner on 21.10.1998. The petitioners were informed by communication dated 2.1.1999 that the representation could not be accepted. It is against this rejection of the representation that the petitioners have approached

this Court.

3. After perusal of the pleadings and on a consideration of the submissions advanced before us, it is obvious that the petitioners' prayer in the petition cannot be granted. The Award of the Tribunal has been modified by this Court only to the extent that the scheme is made applicable with effect from 1.3.1998. Although this Court had granted the petitioners liberty to approach the first respondent regarding the date from which the scheme should be implemented, the petitioner cannot by way of a writ under Articles 226 or 227 challenge the refusal of the first respondent to grant the benefits with retrospective effect from the date of reference. The petitioners grievance raised against the award cannot be reagitated when all these contentions were considered by this Court in Writ Petition No.308/95. The rule issued in that petition was made absolute. The Award had been modified by the consent of parties and the scheme was implemented qua the 53 workmen prospectively. This Court under Article 226 and 227 cannot consider whether the representation made by the petitioners has been properly decided or not as that would amount to reagitating the same contentions which were raised in the earlier petition.

4. In fact, in reply to the notice sent by the

petitioners the first respondent has stated that this scheme was implemented by collecting amounts from the persons who use berth No.9 and all eligible employees were paid from this amount. It is the contention of the respondent Mormugao Port Trust that this amount having been distributed earlier, there is no question of paying that amount to any other employee at this stage. We do not think this is an unreasonable attitude adopted by the respondent Mormugao Port Trust.

5. In view of this, the petition rejected. Rule discharged. No order as to costs.

NISHITA MHATRE, J.

P.V. HARDAS, J.

ssm.